

AMENDED IN SENATE JUNE 23, 2010

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY APRIL 14, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2398

Introduced by Assembly Member John A. Pérez

February 19, 2010

An act to amend Section 12209 of the Public Contract Code, and to add Chapter 20 (commencing with Section 42970) to Part 3 of Division 30 of the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 2398, as amended, John A. Pérez. Product stewardship: carpet: public procurement.

(1) The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, is required to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient cost-effective manner to conserve water, energy, and other natural resources.

The bill would require, by September 30, 2011, a manufacturer of carpets sold in this state, individually or through a carpet stewardship organization, to submit a carpet stewardship plan to the department, which would be required to include specified elements, including a funding mechanism that provides sufficient funding to carry out the plan, including administrative, operational, and capital costs of the plan. The department would be required to, among other things, within 60 days after the department receives a plan, review and determine whether the plan is complete and notify the submitter of its determination. *The*

bill would specify that any plan not determined to be complete by March 31, 2012, is out of compliance until determined to be complete by the department.

The bill would prohibit a manufacturer, wholesaler, or retailer, on and after April 1, 2012, from selling a carpet unless the plan for that carpet is in compliance with the act's requirements. The act would *also* require the carpet stewardship organization to meet specified targets in order to be in compliance.

Each manufacturer of carpet sold in the state, individually or through a carpet stewardship organization, would be required to prepare and submit to the department an annual report describing the activities carried out pursuant to the carpet stewardship plan.

A manufacturer or carpet stewardship organization submitting a carpet stewardship plan would be required to pay the department an annual administrative fee when submitting the plan for review and approval, as determined by the department. The bill would provide for the imposition of administrative civil penalties upon a person who sells carpet in violation of the bill.

(2) Existing law provides various procedures and requirements pertaining to the purchase of recycled items by the state, including, among other things, recycled paper products, plastic products, metal products, and paint.

This bill would additionally provide requirements for the purchase of carpet.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Discarded carpet is one of the 10 most prevalent waste
- 4 materials in California landfills, equaling 3.2 percent of waste by
- 5 volume disposed of in California in 2008. Because carpet is heavy
- 6 and bulky, it imposes a significant solid waste management cost
- 7 on local governments.
- 8 (b) In 2002 the carpet industry entered into a carpet
- 9 memorandum of understanding (MOU) with the State of California
- 10 to achieve a goal of diverting from landfills 40 percent of discarded
- 11 carpet and recycling 20 percent of discarded carpet by 2012. Since

1 2002, however, the carpet recycling rate has never reached 5
2 percent and in 2008, the most recent year for which data are
3 available, the state's carpet recycling rate was 4.3 percent.

4 (c) As part of its fulfillment of the state's obligations under the
5 carpet MOU, the former Integrated Waste Management Board
6 made loans to various carpet recycling businesses in the state.
7 Those loans are now at risk, and employment in the carpet
8 recycling sector has dropped in recent years due to the continuing
9 low carpet recycling rate.

10 (d) Numerous products can be manufactured from recycled
11 carpets, including carpet, carpet underlayment, automobile parts,
12 picnic tables, park benches, and erosion control products.

13 (e) It is in the interest of the state to work with the carpet
14 industry to take additional steps to increase the collection and
15 recycling of discarded carpet into new products in order to reduce
16 the environmental and economic impacts of carpet as a waste
17 material and to create and sustain jobs in the state's carpet recycling
18 industry.

19 SEC. 2. Section 12209 of the Public Contract Code is amended
20 to read:

21 12209. For purposes of this article, the following minimum
22 content requirements apply:

23 (a) Recycled paper products shall consist of at least 30 percent,
24 by fiber weight, postconsumer fiber.

25 (b) (1) Recycled printing and writing paper shall consist of at
26 least 30 percent, by fiber weight, postconsumer fiber.

27 (2) Printed newspapers that meet the requirements of Chapter
28 15 (commencing with Section 42750) of Part 3 of Division 30 of
29 the Public Resources Code shall be considered in compliance with
30 the requirements of this section.

31 (c) For recycled compost, cocompost, and mulch, at least 80
32 percent of the product shall consist of materials, including, but not
33 limited to, the materials listed in subdivision (c) of Section 12207,
34 that would otherwise be normally disposed of in landfills.

35 (d) For recycled glass, the total weight shall consist of at least
36 10 percent postconsumer material.

37 (e) Rerefined lubricating oil shall have a base oil content
38 consisting of at least 70 percent rerefined oil.

(f) (1) For recycled plastic products, other than printer or duplication cartridges, the total weight shall consist of at least 10 percent postconsumer material.

(2) Recycled printer or duplication cartridges shall comply with either the requirements set forth in subdivision (e) of Section 12156 or the general requirement for recycled plastic products set forth in paragraph (1).

(g) Recycled paint shall have a recycled content consisting of at least 50 percent postconsumer paint. Preconsumer or secondary paint does not qualify as “recycled paint” pursuant to this subdivision. If paint containing 50 percent postconsumer content is unavailable, or is restricted by a local air quality management district, a state agency may substitute paint with at least 10 percent postconsumer content.

(h) Recycled antifreeze fluid shall have a recycled content of at least 70 percent postconsumer materials.

(i) Retreaded tires shall use an existing casing that has undergone an approved or accepted recapping or retreading process, in accordance with Chapter 7 (commencing with Section 42400) of Part 3 of Division 30 of the Public Resources Code.

(j) For tire-derived products, the total content shall consist of at least 50 percent recycled used tires.

(k) For recycled metal products, the total weight shall consist of at least 10 percent postconsumer material.

(l) For reused or refurbished products, there is no minimum content requirement.

(m) For recycled carpet, the total weight, including both fiber and backing, shall consist of at least 25 percent postconsumer carpet.

SEC. 3. Chapter 20 (commencing with Section 42970) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 20. PRODUCT STEWARDSHIP FOR CARPETS

~~42970. The purpose of the carpet stewardship program established pursuant to this chapter is to require carpet manufacturers to develop and implement a program to increase the diversion of postconsumer carpet from landfills, increase the recyclability of carpets, and promote the recycling of postconsumer carpet into materials that are used to manufacture new products.~~

1 42970. *The purpose of this chapter is to increase the recycling*
2 *of postconsumer carpet into secondary products that can compete*
3 *successfully in the market by increasing the diversion of*
4 *postconsumer carpet from landfills, increasing the recyclability*
5 *of carpets, and incentivizing the growth of secondary products*
6 *made from postconsumer carpet.*

7 42971. For purposes of this chapter, and unless the context
8 otherwise requires, the definitions in this section govern the
9 construction of this chapter:

10 (a) “Brand” means a name, symbol, word, or mark that identifies
11 the carpet, rather than its components, and attributes the carpet to
12 the owner or licensee of the brand as the manufacturer.

13 (b) (1) “Carpet” means a manufactured article that is used in
14 commercial or residential buildings affixed or placed on the floor
15 or building walking surface as a decorative or functional building
16 interior feature and that is primarily constructed of a top visible
17 surface of synthetic face fibers or yarns or tufts attached to a
18 backing system derived from synthetic or natural materials.

19 (2) “Carpet” includes, but is not limited to, a commercial or a
20 residential broadloom carpet or modular carpet tiles.

21 (3) “Carpet” does not include a rug, pad, cushion, or
22 underlayment used in conjunction with, or separately from, a
23 carpet.

24 (c) “Carpet stewardship organization” or “organization” means
25 either of the following:

26 (1) An organization appointed by one or more manufacturers
27 to act as an agent on behalf of the manufacturer to design, submit,
28 and administer a carpet stewardship plan pursuant to this chapter.

29 (2) A carpet manufacturer that complies with this chapter as an
30 individual manufacturer.

31 (d) “Carpet stewardship plan” or “plan” means a plan written
32 by an individual manufacturer or a carpet stewardship organization,
33 on behalf of one or more manufacturers, that includes all of the
34 information required by Section 42972.

35 (e) “Consumer” means a purchaser or owner of carpet,
36 including a person, business, corporation, limited partnership,
37 nonprofit organization, or governmental entity.

38 ~~(e)~~

39 (f) “Department” means the Department of Resources Recycling
40 and Recovery.

1 ~~(f)~~

2 (g) “Manufacturer” ~~shall be determined~~ *means*, with regard to
3 a carpet that is sold, offered for sale, or distributed in the state, ~~as~~
4 ~~meaning one~~ *any* of the following:

5 (1) The person who manufactures the carpet and who sells,
6 offers for sale, or distributes that carpet in the state under that
7 person’s own name or brand.

8 (2) If there is no person who sells, offers for sale, or distributes
9 the carpet in the state under the person’s own name or brand, the
10 manufacturer of the carpet is the owner or licensee of a trademark
11 or brand under which the carpet is sold or distributed in the state,
12 whether or not the trademark is registered.

13 (3) If there is no person who is a manufacturer of the carpet for
14 the purpose of paragraphs (1) and (2), the manufacturer of that
15 carpet is the person who imports the carpet into the state for sale
16 or distribution.

17 (h) “*Postconsumer carpet*” *means carpet that is no longer used*
18 *for its manufactured purpose.*

19 ~~(g)~~

20 (i) “Program” means the system for the collection,
21 transportation, recycling, and disposal of carpets pursuant to a
22 completed carpet stewardship plan that is financed and managed
23 or provided by an individual manufacturer or collectively by one
24 or more manufacturers.

25 (j) “*Recycling*” *means the process, consistent with Section*
26 *40180, of converting postconsumer carpet into a useful product that*
27 *meets the quality standards necessary to be used in the*
28 *marketplace.*

29 ~~(h)~~

30 (k) “Retailer” means a person who offers new carpet in a retail
31 sale, as defined in Section 6007 of the Revenue and Taxation Code,
32 including a retail sale ~~at retail~~ through any means, including remote
33 offerings such as sales outlets, catalogs, or an Internet Web site
34 *or other similar electronic means.*

35 ~~(i)~~

36 (l) “Sell” or “sales” means a transfer of title of a carpet for
37 consideration, including a remote sale conducted through a ~~sale~~
38 *sales* outlet, catalog, or Internet Web site or similar electronic
39 means, but does not include a lease.

40 ~~(j)~~

(m) “Wholesaler” means a person who offers new ~~carpets~~ *carpet* for sale in this state in a sale that is not a retail sale, as defined in Section 6007 of the Revenue and Taxation Code, and in which the carpet is intended to be resold.

42972. ~~(a)~~ *On (a) Carpet stewardship plans prepared pursuant to this section shall achieve the purpose of the act as described in Section 42970.*

(b) *On or before September 30, 2011, a manufacturer of carpets sold in this state shall, individually or through a carpet stewardship organization, submit a carpet stewardship plan to the department that will do all of the following:*

(1) *Develop and implement a program, including measurable goals established by the stewardship organization, that will increase the diversion of postconsumer carpet from landfills, increase the recyclability of carpets, and promote the recycling of postconsumer carpet into materials that are used to manufacture new products. meet the purpose of the act as described in subdivision (a).*

(2) *Meet the requirements of Section 42975.*

(3) *Include a funding mechanism, consistent with subdivision (b) (c), that provides sufficient funding to carry out the program as described in the plan, including the administrative, operational, and capital costs of the plan.*

(4) *Include education and outreach efforts to consumers, carpet installation contractors, and retailers, and waste haulers to promote the segregated collection and recycling of postconsumer carpet. their participation in achieving the purpose of the carpet stewardship program as described in subdivision (a). Education and outreach materials may include, but are not limited to, the following:*

(A) *Signage that is prominently displayed and easily visible to the consumer.*

(B) *Written materials and templates of materials for reproduction by retailers to be provided to consumers at the time of purchase or delivery or both.*

(C) *Written materials or templates of materials for reproduction by retailers to be provided to carpet installation contractors.*

~~(b)~~

(c) (1) *The funding mechanism required pursuant to paragraph (3) of subdivision (a) (b) shall provide for an a carpet stewardship assessment per unit of carpet sold by manufacturers in the state,*

1 as determined in the plan, to be paid by each member of the carpet
2 stewardship organization in an amount that cumulatively will
3 adequately fund the program. The assessment shall be remitted to
4 the carpet stewardship organization ~~to be used and shall only be~~
5 *used by the organization* to carry out the program.

6 (2) The amount of the assessment and the anticipated revenues
7 from the assessment shall be specified in the plan and shall be
8 approved by the department as part of the plan. The assessment
9 shall be sufficient to meet, but not exceed, the anticipated cost of
10 carrying out the plan. *Revenue from the assessment shall not be*
11 *used competitively by the organization or an individual*
12 *manufacturer.*

13 42973. Within 60 days after the department receives a plan
14 submitted pursuant to Section 42972, it shall review the plan,
15 determine whether it is complete, and notify the submitter of its
16 determination. If the department notifies the submitter that the
17 plan is not complete, the submitter shall revise and resubmit the
18 plan within 60 days after receiving the notification. *Any plan not*
19 *determined to be complete by March 31, 2012, shall be out of*
20 *compliance with this chapter and subject to Section 42974 until*
21 *the plan is determined by the department to be complete.*

22 42974. ~~On~~ (a) *The department shall enforce this chapter.*

23 (b) *On* and after April 1, 2012, a manufacturer, wholesaler, or
24 retailer shall not offer a carpet for sale in this state or offer a carpet
25 for promotional purposes in this state unless a plan submitted by
26 an organization that includes the manufacturer of that carpet is in
27 compliance with this chapter.

28 (c) *In order to enforce this chapter, the department shall, among*
29 *other activities, review the annual report prepared pursuant to*
30 *Section 42976 and within 90 days of receipt shall determine*
31 *whether the submitter of the plan is in compliance with the*
32 *requirements of the act.*

33 42975. (a) In order to achieve compliance with this chapter,
34 a carpet stewardship organization shall demonstrate to the
35 department that the following targets have been met:

36 (1) The amount of postconsumer carpet recycled in the state
37 shall equal or exceed 25 percent by January 1, 2017.

38 (2) The amount of postconsumer carpet recycled in the state
39 shall equal or exceed 50 percent by January 1, 2022.

1 (b) The percentage of carpet that has been recycled shall be
2 calculated by a method adopted by the department after consulting
3 with carpet stewardship organizations and taking into account the
4 information provided to the department pursuant to Section 42976.

5 (c) If more than one organization submits a carpet stewardship
6 plan pursuant to this chapter, the department shall use information
7 submitted by the organization in its annual report pursuant to
8 Section 42976 to determine the recycling rate attributable to each
9 organization and shall determine compliance with this chapter
10 accordingly.

11 42976. On or before July 1, 2013, and each year thereafter, a
12 manufacturer of carpet sold in the state shall, individually or
13 through a carpet stewardship organization, submit to the department
14 a report describing its activities ~~since the previous report. The to~~
15 *achieve the purpose of the act as described in Section 42970. At*
16 *a minimum, the report shall include all of the following:*

17 (a) The total ~~amount~~ volume of carpet sold and postconsumer
18 ~~carpet collected, by volume and by square yards and weight, in~~
19 the state during the reporting period.

20 (b) The total ~~amount~~ volume of postconsumer carpet recycled,
21 ~~by volume and weight, in the state during the reporting period.~~

22 (c) *The total volume of postconsumer carpet recovered but not*
23 *recycled, by weight, and its ultimate disposition.*

24 (e)

25 (d) The total cost of implementing the carpet stewardship
26 program and other elements of the carpet stewardship plan.

27 (d)

28 (e) An evaluation of the effectiveness of the program, its funding
29 mechanism, and other elements of the plan and anticipated steps,
30 if needed, to improve performance.

31 (f) *Examples of educational materials that were provided to*
32 *consumers during the reporting period.*

33 42977. (a) The carpet stewardship organization submitting a
34 carpet stewardship plan shall pay the department an annual
35 administrative fee. The department shall set the fee at an amount
36 that, when paid by every carpet stewardship organization that
37 submits a carpet stewardship plan, is adequate to cover the
38 department's full costs of administering and enforcing this chapter.
39 The department may establish a variable fee based on relevant
40 factors, including, but not limited to, the portion of carpets sold in

1 the state by members of the organization compared to the total
2 amount of carpet sold in the state by all organizations submitting
3 a carpet stewardship plan.

4 (b) The total amount of annual fees collected pursuant to this
5 section shall not exceed the amount necessary to recover costs
6 incurred by the department in connection with the administration
7 and enforcement of the requirements of this chapter.

8 42978. (a) A civil penalty up to the following amounts may
9 be administratively imposed by the department on any person who
10 sells or offers for sale a carpet that has been prohibited from sale
11 pursuant to Section 42974:

12 (1) One thousand dollars (\$1,000) per violation.

13 (2) Ten thousand dollars (\$10,000) per violation if the violation
14 is intentional, knowing, or negligent.

15 (b) Any penalties collected by the department shall be used to
16 offset the cost of administering and enforcing this chapter.

17 42979. This ~~article~~ *chapter* does not limit, supersede, duplicate,
18 or otherwise conflict with the authority of the Department of Toxic
19 Substances Control under Section 25257.1 of the Health and Safety
20 Code to fully implement Article 14 (commencing with Section
21 25251) of Chapter 6.5 of Division 20 of the Health and Safety
22 Code, including the authority of the department to include a carpet
23 in its product registry.

24
25
26 **CORRECTIONS:** _____

27 **Text—Page 6.** _____
28